

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

JOHN R. OGORSOLKA and LISA K.)
OGORSOLKA, husband and wife,)
Plaintiffs,) NO. 2:14-cv-00078-RSM
v.) ORDER GRANTING MOTIONS TO
RESIDENTIAL CREDIT SOLUTIONS, INC.,) DISMISS
MORTGAGE ELECTRONIC)
REGISTRATION SYSTEMS, INC., BANK)
OF NEW YORK MELLON, FKA THE)
BANK OF NEW YORK AS TRUSTEE FOR)
THE CERTIFICATEHOLDERS OF CWMBS,)
INC., CHL MORTGAGE PASS-THROUGH)
TRUST 2007-2 MORTGAGE PASS-)
THROUGH CERTIFICATES, SERIES 2007-)
2, BAC HOME LOANS, LP, and BANK OF)
AMERICA, N.A.,)
Defendants.)

I. INTRODUCTION

This matter comes before the Court upon Defendant Bank of New York Mellon, FKA the Bank of New York as Trustee for the Certificateholders of CWMBS, Inc., CHL Mortgage Pass-Through Trust 2007-2 Mortgage Pass-Through Certificates, Series 2007-2 (“BNYM”)’s Motion to Dismiss Plaintiff’s Complaint for Failure to State a Claim, and BAC Home Loans, LP (“BAC Home Loans”) and Bank of America, N.A.’s (collectively “BANA”) Motion to Dismiss Plaintiff’s Complaint. For the reasons that follow, the motions will be granted.

1 II. BACKGROUND

2 As alleged by Plaintiffs, on or about January 4, 2007, in consideration for a loan, John R.
3 Ogorsolka and Lisa K. Ogorsolka executed a promissory note (“Note”) in the amount of
4 \$504,000.00 in favor of North County Bank. Dkt. # 1-1, Compl., ¶ 8. On or about January 4,
5 2007, to secure repayment of the Note, Plaintiffs executed a Deed of Trust encumbering real
6 property located at 1826 Rucker Avenue, Everett, Washington 98201 (“Property”). The Deed of
7 Trust was recorded in the records of Snohomish County as Instrument No. 200701100091. *Id.* at
8 ¶ 10; Riel Decl., Ex. 1.

9 The mortgage was transferred into a mortgage backed security trust, CWMBS, Inc., CHL
10 Mortgage Pass-Through Trust 2007-2 Mortgage Pass-Through Certificates, Series 2007-2, for
11 which BNYM is the Trustee. Dkt. # 2-1, ¶ 38. On or about December 14, 2011, an Assignment
12 of the Deed of Trust (“Assignment”) was recorded wherein Mortgage Electronic Registration
13 Systems, Inc. (“MERS”) assigned all beneficial interest under the Deed of Trust to BNYM. *Id.* at
14 ¶ 24; Riel Decl., Ex. 2. The Assignment was recorded in the official records of Snohomish
15 County as Instrument No. 201112140475. *Id.* On or about October 14, 2013, a Notice of Default
16 and Intent to Accelerate (“Demand Letter”) was transmitted to the Ogorsolkas by the servicer of
17 the underlying loan notifying them that the total amount need to cure the default on the loan was
18 \$102,461.12 and that if not paid by a date certain, the servicer may take steps to accelerate the
19 sums secured by the Deed of Trust, including foreclosure. Dkt. # 1-1 at ¶ 33; Dkt. # 14-1.

20 On or about November 4, 2013, a Pre-Foreclosure Notice to Borrower (“Pre-Foreclosure
21 Notice”) was transmitted to the Ogorsolkas by the servicer of the underlying loan notifying them
22 of their continued default and requesting that Plaintiffs contact the servicer to discuss
23

1 any available alternatives to foreclosure. Dkt. # 1-1, ¶ 35; Dkt. # 13-2. Plaintiffs filed the instant
 2 Complaint seeking damages and equitable relief for alleged violations of the Washington Deed
 3 of Trust Act (“DTA”), RCW § 61.24 *et seq.*; the Washington Consumer Protection Act (“CPA”),
 4 RCW § 19.86 *et seq.*; for breach of contract; and for common law fraud and misrepresentation.
 5 Defendants BANA and BNYM filed motions to dismiss the claims against them pursuant to Fed.
 6 R. Civ. P. 12(b)(6).

8 III.DISCUSSION

9 As an initial matter, Defendants ask the Court to consider several publicly available
 10 documents that were not attached to, but were relied upon, in the Complaint. The documents
 11 include the following: a copy of the Deed of Trust encumbering the property (Dkt. # 14-1, Riel
 12 Decl., Ex. 1); a copy of the Assignment of the Deed Trust assigning the Deed of Trust to BNYM
 13 (Dkt. # 14-2, Riel Decl., Ex. 2); and copies of the Demand Letter and the Pre-Foreclosure Notice
 14 (Dkt. # 13, Ex. A & B). On a Rule 12(b)(6) motion, the court may consider documents “whose
 15 contents are alleged in a complaint and whose authenticity no party questions, but which are not
 16 physically attached to the [plaintiff’s] pleading.” *Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir.
 17 2005) (citations omitted). The documents presented fit this category and may be properly
 18 considered by the Court.

21 A. Legal Standard

22 In considering a Rule 12(b)(6) motion to dismiss, the Court must determine whether the
 23 plaintiff has alleged sufficient facts to state a claim for relief which is “plausible on its face.”
 24 *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1951 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550
 25 U.S. 544, 570 (2007)). A claim is facially plausible if the plaintiff has pled “factual content that
 26 allows the court to draw the reasonable inference that the defendant is liable for the misconduct

1 alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556). In making this assessment, the Court accepts all
 2 facts alleged in the complaint as true, and makes all inferences in the light most favorable to the
 3 non-moving party. *Baker v. Riverside County Office of Educ.*, 584 F.3d 821, 824 (9th Cir. 2009)
 4 (internal citations omitted). The Court is not, however, bound to accept the plaintiff’s legal
 5 conclusions. *Iqbal*, 129 S. Ct. at 1949-50. While detailed factual allegations are not necessary,
 6 the plaintiff must provide more than “labels and conclusions” or a “formulaic recitation of the
 7 elements of a cause of action.” *Twombly*, 550 U.S. at 555.

9 **B. Analysis**

10 Plaintiffs bring claims against both BANA and BNYM for violations of the DTA, the
 11 CPA, fraud, and breach of contract. These claims rest on three overarching and well-worn
 12 theories: (1) that Defendant MERS was an ineligible beneficiary under the Deed of Trust, which
 13 rendered the Note and Deed of Trust void; (2) the Note was deprived of its status as a negotiable
 14 instrument once it was securitized, which again rendered the Note and Deed of Trust void; and
 15 (3) BANA and BNYM were required to negotiate in good faith to provide Plaintiffs with a loan
 16 modification. As alleged, no theory is sufficient to state cognizable claims against either BANA
 17 or BNYM.

18 The bulk of Plaintiffs’ allegations against BNYM appear to relate generally to BNYM’s
 19 status as Trustee for the Certificate holders of CWMBS, Inc., CHL Mortgage Pass-Through
 20 Trust 2007-2 Mortgage Pass-Through Certificates, Series 2007-2, a mortgage-backed security
 21 pool governed by a pooling and services agreement. Plaintiffs allege that “[t]he transfer, if any,
 22 into the herein-referenced mortgage-backed security pool was fraudulent.” Dkt. # 1.1, ¶ 38. The
 23 Complaint then references a pooling and servicing agreement, the trust classes within that
 24 agreement, and alleges that transfer violated the terms of the pooling and services agreement. *Id.*
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 26

1 at ¶¶ 39-46. It alleges that when the Note was sold into a mortgage-backed security pool, “the
 2 Note [was] no longer a negotiable instrument . . . , which means the Note has been rendered void
 3 and unsecured.” *Id.* at ¶ 47. Thus, according to Plaintiffs, BNYM was not a lawful beneficiary of
 4 the Deed of Trust and lacked authority to appoint a successor trustee to initiate foreclosure
 5 proceedings.

6 BNYM contends that to the extent Plaintiffs’ claims depend on the viability of
 7 securitization theory, they fail to state a cognizable claim for which relief can be granted. For the
 8 allegations against both BNYM and BANA that do not rely on the securitization theory, BNYM
 9 and BANA argue that Plaintiffs’ allegations are factually insufficient to support Plaintiffs’
 10 asserted causes of action. The Court agrees that Plaintiffs’ general challenge to securitization
 11 process does not support cognizable claims, and that, as pled, the Complaint’s factual allegations
 12 are insufficient to raise the right to relief above mere speculation.

15 1. Securitization Theory

16 Several Washington district courts have held that a borrower does not have standing to
 17 enforce the terms of pooling and servicing agreements to which he or she is not a party. *Brodie v.*
 18 *Nw. Tr. Servs., Inc.*, 12-CV-0469-TOR, 2012 WL 4468491 (E.D. Wash. Sept. 27, 2012)
 19 (collecting cases); *See Borowski v. BNC Mortgage, Inc.*, C12-5867 RJB, 2013 WL 4522253, *5
 20 (W.D. Wash. Aug. 27, 2013), appeal dismissed (Oct. 25, 2013), *motion for relief from judgment*
 21 *denied*, C12-5867 RJB, 2013 WL 5770378 (W.D. Wash. Oct. 24, 2013) (“there is ample
 22 authority that borrowers, as third parties to the assignment of their mortgage (and securitization
 23 process), cannot mount a challenge to the chain of assignments unless a borrower has a genuine
 24 claim that they are at risk of paying the same debt twice if the assignment stands”). Plaintiffs
 25 cite to federal and state case law from other states to counter this rule. None of those cases are
 26

1 binding on this Court, nor are they persuasive. For example, Plaintiffs rely heavily on *Glaski v.*
 2 *Bank of Am., Nat'l Ass'n*, 160 Cal. Rptr. 3d 449, 452 (Cal. Ct. App. 2013), reh'g denied (Aug. 29,
 3 2013) for the proposition that a borrower may have standing to challenge the legitimacy of a
 4 transfer of a note into a securitized trust. However, “no California court has followed *Glaski* on
 5 this point, and many have pointedly rejected it.” *Yanova v. New Century Mortg. Corp.*, No.
 6 B247188, 2014 WL 2149797, *5 (Cal. Ct. App. April 25, 2014) (collecting cases).

7 Plaintiffs do not allege that they were investors in a trust or a party to any purchase and
 8 sale agreement and as third party borrowers, they lack standing to enforce any terms of the
 9 pooling and services agreement. *Zhong v. Quality Loan Service Corp.*, No. C13-0814JLR, 2013
 10 WL 5530583, *4 (W.D. Wash. Oct. 7, 2013). Thus, to the extent Plaintiffs’ allege that BNYM is
 11 liable under any asserted claim on the basis that securitization rendered the Note void, such
 12 allegations fail to state a claim as a matter of law.
 13

14 2. CPA

15 To state a claim for violation of the CPA, a plaintiff must allege (1) an unfair or deceptive
 16 trade practice; (2) that occurs in trade or commerce; (3) that has an impact on the public interest;
 17 (4) that causes the plaintiff injury to her business or property; and (5) there is a causal link
 18 between the unfair or deceptive act and the injury suffered. *Hangman Ridge Training Stables,*
 19 *Inc. v. Safeco Title Ins. Co.*, 719 P.2d 531, 535 (Wash. 1986).

20 Plaintiffs allege that BANA and BNYM “wrongfully caused to be sent . . . notices of
 21 default and debt collection letters . . . when . . . Defendants knew or should have known that their
 22 actions were unfair and deceptive and would cause harm to Plaintiff [sic].” Dkt. # 1-1, ¶ 54. This
 23 allegation appears to challenge both BANA and BNYM’s right to collect loan payments from
 24 Plaintiffs and the propriety of RCS’s issuance of the Demand Letter or Pre-Foreclosure Notice.
 25

1 Plaintiffs' allegation rests on the theory that the assignment executed by MERS in favor of
 2 BNYM rendered the Note and Deed of Trust void.

3 Plaintiffs contend that because MERS was an ineligible beneficiary and not entitled to
 4 assign the Deed of Trust, the chain of title is broken and no entity has authority to enforce the
 5 Deed of Trust against Plaintiffs. Plaintiffs' arguments rely on a fundamentally flawed
 6 interpretation of Washington law. Courts have held that although MERS may be an ineligible
 7 beneficiary under the DTA per the Washington Supreme Court's decision in *Bain v.*
 8 *Metropolitan Mortg. Grp.*, 285 P.3d 34 (Wash. 2012), the "conclusory allegation that MERS did
 9 not have the authority to transfer the Deed of Trust" alone, fails to state a claim. *Zhong v. Quality*
 10 *Loan Serv. Corp.*, No. C13-0814JLR, 2013 WL 5530538, *3 (W.D. Wash. Oct. 7, 2013) (citation
 11 omitted). Importantly, under *Bain* "the mere fact MERS is listed on the deed of trust as a
 12 beneficiary in not itself an actionable inquiry." 285 P.3d at 52. In Washington, a lawful
 13 beneficiary is the actual holder of the note. RCW § 61.24.005(2). As pled in the Complaint, the
 14 facts of this case do not implicate the MERS issue because the fact that MERS assigned its
 15 "interest" at some point does nothing to inform whether BNYM was the holder of Plaintiffs'
 16 Note and a lawful beneficiary under the DTA. *See Lynott v. Mortg. Elec. Registration System*,
 17 No. 12-cv-5572-RBL, 2012 WL 5995053, *2 (W.D. Wash. Nov. 30, 2012) ("possession of the
 18 note makes U.S. Bank the beneficiary; the assignment [of the deed of trust] merely publicly
 19 records that fact").

20 Although the Washington Supreme Court has held that MERS' presence in the chain of
 21 title may "presumptively meet[] the deception element of a CPA claim" (*Bain*, 285 P.3d at 51–
 22 52), a plaintiff must still plead all CPA elements to state a viable claim. To satisfy the causation
 23 element, "[a] plaintiff must establish that, but for the defendant's unfair or deceptive practice, the

1 plaintiff would not have suffered an injury.” *Indoor Billboard/Washington, Inc. v. Integra*
 2 *Telecom of Washington, Inc.*, 170 P.3d 10, 22 (Wash. 2007). Here, Plaintiffs’ allegations
 3 concerning MERS’ temporary status as an invalid beneficiary on the Deed of Trust do not
 4 demonstrate that MERS’ presence in the chain of assignments was causally related in any way to
 5 their uncontested loan default. Assignments of a deed of trust serve only “to put parties who
 6 subsequently purchase an interest in the property on notice of which entity owns a debt secured
 7 by the property.” *Corales v. Flagstar Bank, FSB*, 822 F. Supp. 2d 1102, 1109 (W.D. Wash.
 8 2011) (citing RCW 65.08.070). Plaintiffs do not allege that they failed to make payments
 9 because they did not know where to send payments or know what entity was servicing their loan.
 10 Thus, to the extent the CPA allegations are premised on the presence of MERS on the Deed of
 11 Trust or the invalidity of the MERS assignment, the Complaint fails to state a claim for violation
 12 of the CPA. *See Zhong*, 2013 WL 5530583 at *5.

15 Plaintiffs also contend that the failure of BANA to give them a loan modification
 16 constituted a violation of the CPA. The allegations levied to support this theory are insufficient
 17 as well. Plaintiffs failed to allege that BANA was under a contractual obligation to provide
 18 Plaintiffs with a loan modification. And Plaintiffs failed to plead factual allegations to
 19 demonstrate that BANA acted improperly by failing to offer a loan modification. The Complaint
 20 alleges only that Mr. Ogorsolka tried to initiate the application process for obtaining a loan
 21 modification with BANA, and that BANA sent “ongoing requests for additional information
 22 and/or their [sic] request to send the same information again.” *See* Dkt. # 1-1, ¶¶ 12-17. Plaintiffs
 23 rely on the Ninth Circuit Court of Appeal’s decision in *Corvello v. Wells Fargo Bank N.A.* to
 24 support their assertion that BANA acted in an unfair and deceptive manner. 728 F.3d 878 (9th
 25 Cir. 2013).

1 Plaintiffs' reliance on *Corvello* is misplaced and fails to cure the Complaint's
 2 deficiencies. In *Corvello*, the issue before the Court was whether the bank that serviced
 3 plaintiffs' mortgage loan was contractually required to offer a permanent loan modification after
 4 plaintiffs complied with the requirements of a trial period plan ("TPP"). *Id.* at 880. After
 5 considering the Seventh Circuits' decision in *Wigod v. Wells Fargo Bank, N.A.*, 673 F.3d 547
 6 (7th Cir. 2012), and construing the relevant language of the TPP under California law, the Court
 7 held that "where borrowers allege, and we must assume, that they have fulfilled all of their
 8 obligations under the TPP, and the loan servicer has failed to offer a permanent modification, the
 9 borrowers have valid claims for breach of the TPP agreement." *Id.* at 884.

10
 11 Here, the Complaint does not allege that the Ogorsolkas completed the application
 12 process, that they complied with the requirements of the TPP, or even that they were wrongfully
 13 denied a loan modification for which they were eligible. Instead, the Complaint summarily
 14 concludes that BANA "was attempting to create a situation where plaintiff's loan modification
 15 attempts would fail, which would put Bank of America in a position to foreclose on the
 16 property." *Id.* at ¶ 17. Such allegations do not plausibly show that BANA acted deceptively
 17 during the alleged modification process and that its actions caused Plaintiffs' injury. Thus, the
 18 allegations are insufficient to demonstrate a factually-supported right to relief under the CPA.
 19
 20

21 3. DTA

22
 23 "In Washington, '[a] mortgage creates nothing more than a lien in support of the debt
 24 which it is given to secure.'" *Bain*, 285 P.3d 34 at 38 (quoting *Pratt v. Pratt*, 209 P. 535, 535
 25 (Wash. 1922)). Mortgages secured by a deed of trust "do not convey the property when
 26 executed; instead, '[t]he statutory deed of trust is a form of a mortgage.'" *Id.* (quoting 18

1 William B. Stoebuck & John W. Weaver, *Washington Practice: Real Estate: Transactions* § 17.1,
 2 at 253 (2d ed. 2004)). In effect, “it is a three-party transaction in which land is conveyed by a
 3 borrower, the ‘grantor,’ to a ‘trustee,’ who holds the title in trust for a lender, the ‘beneficiary,’
 4 as security for credit or a loan the lender has given the borrower.” *Id.* (quoting Stoebuck &
 5 Weaver, § 17.3, at 260). However, “only the actual holder of the promissory note or other
 6 instrument evidencing the obligation may be a beneficiary with the power to appoint a trustee to
 7 proceed with a nonjudicial foreclosure on real property.” *Id.* at 36.

9 Plaintiffs contend that BANA and BNYM violated the Washington DTA when they
 10 instituted foreclosure proceedings against them. Notwithstanding that the Complaint fails to
 11 allege that foreclosure proceedings were actually commenced, Plaintiffs rely again on the
 12 presence of MERS on the Deed of Trust and the MERS assignment to argue that the Deed of
 13 Trust and Note were void. As discussed above, these theories misapply the law. In Washington,
 14 the beneficiary is the holder of the instrument secured by the deed of trust. RCW § 61.24.005(2).
 15 If a lawful beneficiary initiates foreclosure proceedings, the MERS issue is simply not present
 16 and allegations of MERS-related wrongdoing alone are insufficient to maintain a viable DTA
 17 claim.

20 **4. Fraud and Misrepresentation**

21 To state a claim for fraud under Fed. R. Civ. P. 9(b), the Complaint must allege the
 22 circumstances constituting fraud with particularity. To survive a 12(b)(6) motion, allegations
 23 must be pled with “more specificity including account of the ‘time, place, and specific content of
 24 the false representations as well as the identities of the parties to the misrepresentations.” *Swartz*
 25 *v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007) (quoting *Edwards v. Marin Park, Inc.*, 356
 26

1 F.3d 1058, 1066 (9th Cir. 2004). In Washington, to state a claim for fraud, a plaintiff must
 2 allege:

3 a representation of an existing fact; (2) its materiality, (3) its falsity, (4)
 4 the speaker's knowledge of its falsity or ignorance of its truth, (5) his
 5 intent that it should be acted on by the person to whom it is made; (6)
 6 ignorance of its falsity on the part of the person to whom it is made; (7)
 7 the latter's reliance on the truth of the representation; (8) his right to rely
 8 upon it; (9) his consequent damage.

9 *Kirkham v. Smith*, 23 P.3d 10, 13 (Wash. Ct. App. 2001). Further, “it is clear that common law
 10 fraud requires proof of a knowing and intentional misrepresentation.” *Id.*

11 Plaintiffs contend that BANA and BNYM are liable for fraud based upon MERS’
 12 presence in the Deed of Trust and “robo-signing of the assignment.” Dkt. # 24, p. 20. Taking the
 13 MERS theory first, Plaintiffs have failed to plead a number of required elements of fraud. First,
 14 MERS’ purported assignment of the Deed of Trust to BNYM was not made for Plaintiffs’
 15 benefit and the Complaint does not allege that Defendants represented to Plaintiffs that MERS
 16 held beneficiary status when executing that assignment. Second, *Bain* was decided in 2012, well
 17 after MERS allegedly acted as an ineligible beneficiary in assigning the Deed of Trust on
 18 December 14, 2011. Defendants could not have known that they were committing fraud by
 19 listing MERS as the “beneficiary” of the deed of trust before *Bain*. Third, Plaintiffs have alleged
 20 no facts to show that they relied on MERS’s “fraudulent” presence whatsoever or that they took
 21 any action in reliance of MERS acting as the purported beneficiary.

22 As to the “robo-signing” theory, Plaintiffs again fail to plausibly allege facts that satisfy
 23 the elements of fraud. The Complaint merely alleges that BANA “committed fraud when [it]
 24 fraudulently executed the Assignment of the Deed of Trust using a known robo-signer.” Dkt. #
 25 1-1, ¶ 72. This bare-bones conclusion fails to identify any facts to show that the “robo-signing”

1 was a statement made to induce their reliance, that it caused them any specific damages, or that it
 2 affected their ability to comply with their loan obligation.

3 5. Breach of Contract

4 In their Complaint, Plaintiffs asserted that Defendants “breached the contract when
 5 MERS appeared as nominee for the beneficiary on the Deed of Trust.” Dkt. # 1-1, ¶ 79.
 6 Defendants moved to dismiss the breach of contract claim on the basis that MERS’ presence on
 7 the Deed of Trust does not invalidate Plaintiffs’ loan obligation; that Plaintiffs fail to identify
 8 which portions of the contract MERS’ presence violated; and that because Plaintiffs do not deny
 9 that they defaulted on their loan, they did not perform every material provision of the contract.
 10 Plaintiffs’ response brief failed to address any of these points, and instead argued that BNYM
 11 and BANA breached the duty of good faith and fair dealing by failing to offer Plaintiffs a loan
 12 modification and by appointing RCS as the new loan servicer.
 13

14 Plaintiffs’ Complaint failed to identify any relevant portion of a contract that Defendants
 15 breached, and their response brief failed to address any of the arguments raised by Defendants.
 16 Although the Court may dismiss the claim on that basis alone (*see LCR 7(b)(2)*), Plaintiffs’
 17 Complaint also failed to identify any portion of the contract for which Defendants breached the
 18 duty of good faith and fair dealing. By failing to identify which terms of the loan give rise to
 19 their claims, Plaintiffs have failed to state a cognizable legal claim for either breach of contract
 20 or breach of the duty of good faith and fair dealing. *See e.g., Chapel v. BAC Home Loans Serv.,*
 21 *LP*, No-C11-5882BHS, 2012 WL 727135, *4 (W.D. Wash. Mar. 6, 2012) (dismissing claim
 22 “based on [Plaintiff’s] failure to show which terms of the contract give rise to a claim for breach
 23 of the duty of good faith and fair dealing”).
 24

IV. CONCLUSION

Having considered the motions, the responses and replies thereto, the declarations and attached exhibits, and the remainder of the record, the Court hereby finds and ORDERS:

- (1) Defendant BNYM's Motion to Dismiss (Dkt. # 13) is GRANTED;
- (2) Defendant BANA's Motion to Dismiss (Dkt. # 10) is GRANTED;
- (3) Plaintiffs' Complaint is dismissed without prejudice as to Defendants BNYM

(4) Plaintiffs shall have fourteen (14) days to file an amended complaint that cures the deficiencies discussed herein. Should they fail to do so, the claims against BNYM and BANA will be dismissed with prejudice.

ORDERED this 23 day of June 2014.


RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE